

Chapter 339.
Arrest Act 1977.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 339.

Arrest Act 1977.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Arrest Act 1977,

Being an Act—

- (a) to specify the circumstances in which persons may be arrested; and
 - (b) to confer certain powers and duties on persons making arrests; and
 - (c) to abolish certain rules of common law,
- and for related purposes.

PART I. – PRELIMINARY.

1. INTERPRETATION.

(1) In this Act, unless the contrary intention appears—

“authorized person” means a person empowered to make an arrest under this Act or any other law or by a warrant;

“the commencement date” means 3 November 1977, being the date on which the *Arrest Act 1977* came into force;

“court” means any court, other than a Village Court, and includes a judge or magistrate of any court, other than a Village Court;

“craft” means an aircraft or vessel;

“information” includes a complaint for an offence;

“officer-in-charge”, in relation to a police station at a particular time, means the policeman who is in charge of the police station at that time;

“place of confinement” means a correctional institution, rural lock-up or police lock-up;

“policeman” means a member of the Police Force;

“**warrant**” means a warrant issued under this Act or any other law for the arrest of a person.

(2) A reference in this Act to an offence for which a penalty is imprisonment does not include an offence in respect of which a sentence of imprisonment may only be imposed in default of payment of a fine.

(3) For the purposes of this Act a person believes something on reasonable grounds if—

- (a) he personally has that belief; and
- (b) there are reasonable grounds for that belief.

2. APPLICATION.

(1)^{1 2}Notwithstanding any other law but subject to Subsection (2) and to Section 24, this Act applies to and in relation to an arrest for any offence whether made by or under this Act or by or under any other law.

(2)^{3 4}This Act does not apply to an arrest made under the *Civil Aviation Act 2000*.

¹ Section 2(1) amended by No 17 of 2000.

² Section 2(1) amended by No 17 of 2000.

³ Section 2(2) added by No 17 of 2000.

⁴ Section 2(2) added by No 17 of 2000.

PART II. – CIRCUMSTANCES JUSTIFYING ARREST WITHOUT WARRANT.**3. ARREST WITHOUT WARRANT BY A POLICEMAN.**

⁵A policeman may, without warrant, arrest a person whom he believes on reasonable grounds—

- (a) is about to commit; or
- (b) is committing; or
- (c) has committed,

an offence.

4. ARREST BY A POLICEMAN FOR BREACH OF BAIL CONDITION.

(1) A policeman may, without warrant, arrest a person whom he has reasonable grounds to believe and does in fact believe—

- (a) has breached a condition of his bail; or
- (b) is about to breach a condition of his bail.

(2) A person arrested under Subsection (1) shall not be released on bail by a policeman but shall be brought before a court as soon as reasonably possible after his arrest.

5. ARREST WITHOUT WARRANT BY MEMBER OF THE PUBLIC.

Subject to any requirements imposed by the law creating the offence, a person, other than a policeman, may, without warrant, arrest a person whom he believes on reasonable grounds—

- (a) is committing; or
- (b) has committed,

an offence for which the penalty is imprisonment.

6. ARREST WITHOUT WARRANT FOR OFFENCE ON BOARD CRAFT.

Notwithstanding Sections 3 and 5, where—

- (a) a person is committing, is about to commit or has committed an offence relating to or affecting the use of a craft; or
- (b) the person in command of a craft suspects on reasonable grounds that a person is committing, is about to commit or has committed an offence relating to or affecting the use of that craft,

the person in command of the craft or a person authorized by him may arrest that person without warrant.

⁵ Section 3 amended by No. 9 of 1979, s1.

7. ARREST BY PERSON EXECUTING WARRANT OF COMMITMENT.

Where a person, the subject of a warrant of commitment, is not in custody at the time the warrant is to be executed, the person authorized to execute the warrant may arrest that person without a warrant.

PART III. – ARREST WARRANTS.**8. ISSUE OF WARRANT BY A COURT OTHER THAN A LOCAL COURT.**

Where an information is laid before a court, other than a Local Court, that there are reasonable grounds for believing—

- (a) that a person has committed an offence within the country; and
- (b) that it would not be practicable or desirable to proceed against the person by summons in that his arrest is necessary—
 - (i) to ensure his appearance in court to answer a charge for the offence; or
 - (ii) to prevent—
 - (A) the continuation or repetition of the offence; or
 - (B) the commission of a further offence; or
 - (iii) to preserve the safety or welfare of a member of the public or of the person,

the court may issue a warrant for the arrest of the person.

9. ISSUE OF WARRANT BY A LOCAL COURT.

Where a complaint for an offence has been issued in a Local Court the Court, if it considers it necessary, may issue a warrant for the arrest of the defendant.

10. ISSUE OF WARRANT FOR BREACH OF BAIL CONDITION.

(1) Where proceedings have been commenced before a court, other than a Local Court, and the court is satisfied that there are reasonable grounds for believing that a person is in breach of a condition of his bail granted in connection with those proceedings, the court may issue a warrant for the arrest of that person.

(2) A person arrested under a warrant issued under Subsection (1) shall not be granted bail by a policeman but shall be brought before a court without delay.

11. DIRECTION OF WARRANT.

A warrant may be directed to all or any of the following:—

- (a) a named person;
- (b) the officer for the time being in charge of police in a particular province or place;
- (c) all members of the Police Force.

12. FORM OF WARRANT.

A warrant shall—

- (a) name or otherwise describe the person against whom it is issued; and

- (b) state briefly the offence or nature of the information on which it is founded;
and
- (c) in the case of a warrant to arrest a defendant—order the person to whom it is directed to arrest the defendant and to bring him before a court to answer to the information and to be further dealt with according to law.

13. EXECUTION OF WARRANTS.

Where a warrant is directed to a person he may, in accordance with Part IV, and with assistants if necessary, arrest the person against whom the warrant is issued.

PART IV. – MANNER OF ARREST, ETC.**14. MANNER OF EFFECTING ARREST.**

(1) Where an authorized person intends to make an arrest and the person to be arrested—

- (a) does not resist the arrest and the authorized person is aware that they speak a common language, the authorized person shall at the time of arrest—
 - (i) advise the person he is under arrest; and
 - (ii) advise the person arrested of the reason for his arrest; and
 - (iii) request the person arrested to accompany him to a police station, to a court or place of confinement, as the case may be; or
- (b) does not resist the arrest and the authorized person is aware or ascertains—
 - (i) that they do not speak a common language; or
 - (ii) that he is unable to speak to the person arrested because the person arrested suffers from some mental or physical defect,
the authorized person shall indicate by reasonable means to the person arrested that—
 - (iii) he is under arrest, and
 - (iv) he is to accompany the authorized person; or
- (c) resists the arrest, whether by force or by refusing to move, or seeks to evade arrest, whether by running away or by other means, the authorized person may, subject to Subsection (2), use all reasonable means to make the arrest.

(2) Subsection (1)(c) does not justify the use of greater force than is reasonable in the circumstances.

15. WARRANT TO BE CARRIED OR PRODUCED.

Where a warrant issued under Section 8, 9 or 10 is directed to a person—

- (a) in accordance with Section 11(a) or (b)—he shall, when executing the warrant, carry it with him and produce it on request; or
- (b) by virtue of Section 11(c) only—he shall, on request of the arrested person, produce it as soon as practicable.

PART V. – DUTIES TO BE PERFORMED AFTER ARREST.**16. DUTIES OF PRIVATE CITIZEN AFTER EFFECTING AN ARREST.**

(1) Where a person, not being a policeman, makes an arrest, he shall–

- (a) as soon as practicable but subject to Subsection (2), hand the arrested person over to a policeman or take the arrested person or cause him to be taken to a police station; and
- (b) subject to Subsection (2), use all reasonable means to prevent the arrested person escaping.

(2) Subsection (1) does not justify the use of greater force than is reasonable in the circumstances.

17. DUTIES OF A POLICEMAN AFTER ARREST.

(1) Where a policeman makes an arrest he shall–

- (a) take the arrested person without delay to a police station to be dealt with under Section 18 or before a court; and
- (b) subject to Subsection (2), use all reasonable means to prevent the arrested person from escaping.

(2) Subsection (1)(b) does not justify the use of greater force than is reasonable in the circumstances.

18. DUTIES OF OFFICER-IN-CHARGE OF STATION.

(1) Where a person has been arrested and taken to a police station, the officer-in-charge of the police station shall–

- (a) immediately release the person if he considers that–
 - (i) the person arrested did not commit the offence for which he was arrested or any other offence and there is no other reason to justify his detention under this Act or any other law; or
 - (ii) there are good reasons why the arrested person should not be proceeded against for an offence; or
 - (iii) proceedings can be effectively taken by way of summons against the arrested person; and
- (b) if he does not release the person under Paragraph (a)–take the person into custody and enter in a permanent register of arrests the name of the person and if it appears that the person arrested–
 - (i) has committed an offence–the nature of that offence; or
 - (ii) has been arrested for some other reason–that reason; and
- (c) promptly inform the person arrested or cause him to be informed in language he understands of–

- (i) the reason for his arrest; and
 - (ii) details of the charges against him; and
 - (iii) his right, immediately and in private—
 - (A) to communicate with a member of his family or a personal friend; and
 - (B) to give instructions to a lawyer of his choice, including the Public Solicitor if he is entitled to legal aid; and
 - (d) as soon as practicable consider and accordingly grant or refuse bail in accordance with the *Bail Act 1977*; and
 - (e) if bail is not granted under Paragraph (d) or if for any other reason the person arrested remains in custody at the station—take the person, or cause him to be taken, before a court without delay; and
 - (f) if bail is granted to the person by a court but for any reason the person remains in custody at the station after bail is granted—take the person or cause him to be taken before a court as soon as practicable after the expiration of 14 days after the bail is granted; and
 - (g) if bail is granted to the person but he remains in custody after being brought before a court on one or more occasions—take the person or cause him to be taken from time to time before a court as soon as practicable after the expiration of 14 days after the time he last appeared before a court.
- (2) The officer-in-charge of a police station shall at all times permit persons arrested or detained at the police station—
- (a) whenever practicable, without delay and in private to communicate with—
 - (i) a member of his family or a personal friend; and
 - (ii) a lawyer of his choice, including the Public Solicitor if he is entitled to legal aid; and
 - (b) to give instructions to a lawyer of his choice, including the Public Solicitor if he is entitled to legal aid.

19. PROCEDURE IN THE CASE OF A WARRANT OF COMMITMENT.

(1) Notwithstanding Sections 16, 17 and 18 but subject to Subsection (2), where a warrant of commitment has been issued in respect of a person who is not in custody at the time and he is later arrested by the person or one of the persons to whom the warrant is directed, the person effecting the arrest shall convey the person arrested to a place of confinement in accordance with the warrant.

(2) Where a person making an arrest referred to in Subsection (1) believes on reasonable grounds that the person arrested has committed an offence for which he has not been tried, the person making the arrest shall deal with the person arrested in accordance with Section 16 or 17, as the case may be.

20. DUTIES OF OFFICER WHERE WARRANT OF COMMITMENT ISSUED.

(1) Notwithstanding Section 17 but subject to Subsection (2), where a person has been arrested and taken to a police station and a warrant of commitment has been issued in respect of that person, the officer-in-charge of the police station shall take or cause the person to be taken to a place of confinement in accordance with the warrant.

(2) Where the officer-in-charge believes that the person arrested committed an offence for which he has not been tried, the officer shall deal with the arrested person in accordance with Section 18.

PART VI. – POWERS OF POLICE AFTER ARREST.

21. FINGER-PRINTS, ETC.

(1) Where a person is in lawful custody on a charge of committing an offence, a commissioned officer of the police force or the officer-in-charge of a police station may—

- (a) take or cause to be taken such particulars as he deems necessary for identification of that person, including his photograph, finger-prints and palm-prints; and
- (b) subject to Subsection (2)—use or cause to be used such force as is reasonably necessary to secure those particulars.

(2) Subsection (1) does not justify the use of greater force than is reasonable in the circumstances.

(3) Where a person referred to in Subsection (1) is not convicted of the charge in respect of which he is in custody, or an appeal against his conviction is upheld—

- (a) all records of particulars for identification of that person and all copies of those records taken under that subsection shall be destroyed within a period of one month after the proceeding is concluded; and
- (b) if he so requests before they have been destroyed—he is entitled to be present, at his own expense, at a police station nominated by him to witness the destruction of those records and copies.

(4) A policeman may apply to a court within the period referred to in Subsection (3) for an order that the records of a person taken under Subsection (1) not be destroyed.

(5) If the court is satisfied that the records referred to in Subsection (4), are required in respect of charges that have already been laid against the person it may order that the records not be destroyed until that charge has been dealt with.

22. MEDICAL EXAMINATION.

(1) Subject to Subsection (6) where—

- (a) a person is in custody in respect of an offence; and
- (b) a commissioned officer of the Police Force or the officer-in-charge of a police station believes on reasonable grounds that the nature and circumstances of the alleged offence in respect of which the person is in custody are such that a medical examination of the person in custody would provide evidence relating to the offence; and
- (c) the person in custody has given his written consent or a court has ordered that the examination take place,

a medical practitioner, if requested by the commissioned officer or the officer-in-charge, as the case may be, may conduct a medical examination.

(2) An application for an order under Subsection (1) to a court by a commissioned officer of the Police Force or the officer-in-charge of the police station at which the person is being held may be made—

- (a) in person; or
- (b) where an application in person is not practicable—by telephone.

(3) If the court is satisfied on application being made to it under Subsection (2) that the commissioned officer of the Police Force or the officer-in-charge of the police station has reasonable grounds for his belief that a medical examination of the person in custody will provide evidence relating to the offence for which the person is in custody, it may order—

- (a) in writing that the medical examination take place; or
- (b) where the application has been made under Subsection (2)(b) and the circumstances of the case justifies its doing so orally, that the medical examination take place, but it shall confirm the order in writing within three days after the making of the order.

(4) Where the application for a medical examination is made under Subsection (2), the court granting the application shall cause its order to be forwarded to the applicant.

(5) A medical practitioner conducting a medical examination for which a court order has been issued under Subsection (3) may—

- (a) use such force as is necessary to carry out the medical examination; and
- (b) use assistants to help him with the examination.

(6) Subsection (5) does not justify the use of greater force than is reasonable in the circumstances.

PART VII. – MISCELLANEOUS.**23. POWERS OF ARREST CONFERRED BY OTHER LAWS.**

The provisions of this Act which specify the circumstances in which a person may be arrested are in addition to and not in derogation of a provision of any other Act or subordinate enactment which confers a power of arrest.

24. POWERS, PRACTICE AND PROCEDURE RELATING TO CONTEMPT OF THE PARLIAMENT, ETC.

(1) This Act does not affect any power, practice or procedure of the Parliament or of a court of record that, immediately before the commencement date, applied to and in relation to a person in contempt of the Parliament or contempt of court, as the case may be.

(2) An officer of the Parliament or of a court of record and any person assisting such an officer shall not be deemed to be acting unlawfully if he makes an arrest and deals with the person arrested in accordance with the practice and procedure for the time being of the Parliament or the court, as the case may be.

25. PROTECTION FROM CRIMINAL LIABILITY WHERE WRONG PERSON ARRESTED.

Notwithstanding any other law, where—

- (a) a warrant is issued for the arrest of a person; and
- (b) the person to whom the warrant is directed makes an arrest in accordance with Part IV. believing in good faith and on reasonable grounds that the person he arrests is the person against whom the warrant was issued; and
- (c) the person arrested is not the person against whom the warrant was issued,

the person making the arrest, or any person assisting him, does not commit an offence.

26. CIVIL REMEDY FOR WRONGFUL EXERCISE OF POWERS CONFERRED BY THIS ACT.

(1) A person who—

- (a) exercises a power to make an arrest to which this Act applies in breach of this Act; or
- (b) exercises a power conferred by this Act, other than a power of arrest, in breach of this Act; or
- (c) performs a duty imposed by this Act in breach of this Act; or
- (d) fails or refuses to perform a duty imposed by this Act,

may be liable in damages to the person aggrieved by that breach.

(2) An action under Subsection (1) may be brought—

- (a) in the National Court; or
- (b) in a District Court, and in the case of a District Court, the court has jurisdiction within the limits prescribed by Section 21 of the *District Courts Act 1963*.

(3) In an action under Subsection (1), a court may award exemplary damages.

(4) The provisions of this section are in addition to and not in derogation of the provisions of the *Constitution* or any other law dealing with the enforcement of any constitutional right, power, duty, restriction or prohibition.

27. CERTAIN ACTS DEEMED TO BE WITHIN COURSE OF EMPLOYMENT.

For the purpose of any civil proceeding, where the making of an arrest would otherwise be within the scope of a person's employment, the mere non-compliance by an employee with a provision of this Act does not, of itself, take any act of the employee, committed during the course of the arrest outside the scope of his employment.

28. ONUS OF PROOF IN RELATION TO CERTAIN CIVIL PROCEEDINGS.

(1) Where in any civil proceeding it appears—

- (a) that one party to the proceeding had another party to that proceeding in his custody after the arrest of the other party; and
- (b) that the first-mentioned party was not a policeman at the time of that custody,

the first-mentioned party bears the onus of proving—

- (c) that he handed over the other party to a policeman as soon as was practicable; or
- (d) that he took the other party or caused him to be taken to a police station as soon as was practicable; or
- (e) that he dealt with the other party under Section 19.

(2) Where in any civil proceeding it appears—

- (a) that one party to the proceeding had another party to the proceeding in his custody after the arrest of the other party; and
- (b) that the first-mentioned party was a policeman at the time of that custody,

the first-mentioned party bears the onus of proving—

- (c) that he took the other party without delay to a police station or before a court; or
- (d) that he dealt with the other party under Section 19.

(3) Where in any civil proceeding it appears that at a particular time one party to the proceeding was the officer-in-charge of a police station and another party to that proceeding was in custody at the police station at that time, the first-mentioned party

bears the onus of proving that he took the other party or caused the other party to be taken before a court without delay after being brought to that police station.

29. INDEMNITY OF POLICEMEN.

(1) Notwithstanding any other law, a policeman against whom proceedings are brought under Section 26(1) shall—

- (a) not join the State as a defendant in those proceedings; and
- (b) subject to Subsection (2), be fully indemnified by the State in respect of those proceedings where—
 - (i) he had, at the time a *bona fide* belief that he was carrying out his duties under this Act; and
 - (ii) he was not acting maliciously or with wilful disregard to his professional duties and responsibilities; and
 - (iii) he was not grossly negligent in the performance of his duties.

(2) The court before whom proceedings are brought under Section 26(1) against a policeman may—

- (a) in the case specified in Subsection (1) enter judgement for the plaintiff against the defendant and, at the same time, order that the whole amount awarded as judgement for the plaintiff be paid by the State to the defendant policeman as contribution; or
- (b) in any case where the policeman was—
 - (i) acting maliciously or with wilful disregard to his professional duties and responsibilities; or
 - (ii) grossly negligent in the performance of his duties,

enter judgement for the plaintiff against the defendant and, at the same time determine the amount of contribution to be paid by the State to the defendant policeman.

(3) An order under Subsection (2)(a) and a determination under Subsection (2)(b) shall be deemed for all purposes to be a judgement of the court in favour of the policeman against the State and is enforceable and appealable accordingly.

30. ABOLITION OF CERTAIN COMMON LAW POWERS AND DUTIES.

Subject to Section 24—

- (a) all powers at common law to arrest a person are abolished; and
- (b) all duties and responsibilities imposed by the common law in relation to an arrest are abolished.

31. REGULATIONS.

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed

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or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Office of Legislative Counsel, PNG